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OFFICE OF PETITIONS

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

In re Application of	:	DECISION ON APPLICATION
Kraus et al.	:	FOR
Application No. 09/698,893	:	PATENT TERM ADJUSTMENT
Filed: October 27, 2000	:	
Atty Docket No. 07588/008001	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed January 29, 2010. Applicant requests that the patent term adjustment indicated on the initial determination of patent term adjustment be corrected from zero (0) days to three hundred and fifty-nine (359) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **three hundred and fifty-nine (359) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

Applicant has asserted that the period of applicant delay should be reduced, and one period of examination delay should be assessed. Applicant's arguments have been considered, and each has been deemed to be persuasive.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed July 13, 2004, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were requested. Accordingly, the above-identified application became abandoned on October 14, 2004. A notice of abandonment was mailed on January 25, 2005.

A petition pursuant to 37 C.F.R. 1.181 was filed on February 4, 2005. The petition was granted via the mailing of an Office action on February 4, 2005, which noted that the petition was accompanied by a postcard receipt which evinces that a response was received in the Office on January 18, 2005 (three months and 97 days after the mailing of the non-final Office action).

Four months and 596 days after the response of January 18, 2005 was received, the Office mailed a notice of non-responsive amendment. A response was received on January 16, 2007 (728 days after the response of January 18, 2005). A 728-day reduction was assessed pursuant to 37 CFR 1.704(c)(8).

The Office agrees that the 728-day reduction was improper, and a 97-day reduction should have been assessed, pursuant to 37 CFR 1.704(b).

The Office further agrees that a 596-day adjustment should have been assessed, pursuant to 37 CFR 1.703(a)(2).

The reduction of 728 days has been removed, and a reduction of 97 days has been entered.

An adjustment of 596 days has been entered.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is three hundred and fifty-nine (359) days (791 days of Office delay minus 432 days of Applicant delay).

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Applicant is reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is written over the printed name.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of updated PAIR screen



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 09698893

Application Filing Date	10/27/2000	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	195
A Delays	195	PTO Manual Adjustment	1227
B Delays	0	Applicant Delay (APPL)	1063
C Delays	0	Total PTA (days)	359

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
118	09/04/2010	P028		Adjustment of PTA Calculation by PTO	1227	0	0
108	12/15/2009	MN/=.		Mail Notice of Allowance		0	0
107	12/08/2009	IREV		Issue Revision Completed		0	0
106	12/08/2009	DVER		Document Verification		0	0
105	12/08/2009	N/=.		Notice of Allowance Data Verification Completed		0	0

104	12/08/2009	DOCK	Case Docketed to Examiner in GAU	0
103	12/07/2009	CNTA	Notice of Allowability	0
102	10/08/2009	FWDX	Date Forwarded to Examiner	0
101	08/25/2009	08/04/2009 A...	Response after Non-Final Action	21 97
100	08/25/2009	XT/G	Request for Extension of Time - Granted	0
99	05/04/2009	ELC_RVW	Electronic Review	0
98	05/04/2009	EML_NTF	Email Notification	0
97	05/04/2009	MCTNF	Mail Non-Final Rejection	0
96	04/28/2009	CTNF	Non-Final Rejection	0
95	02/18/2009	FWDX	Date Forwarded to Examiner	0
94	02/06/2009	ELC.	Response to Election / Restriction Filed	0
93	02/06/2009	XT/G	Request for Extension of Time - Granted	0
92	12/02/2008	ELC_RVW	Electronic Review	0
91	12/02/2008	EML_NTF	Email Notification	0
90	12/02/2008	MCTRS	Mail Restriction Requirement	0
89	11/24/2008	CTRS	Requirement for Restriction / Election	0
88	09/09/2008	FWDX	Date Forwarded to Examiner	0
86	09/09/2008	FWDX	Date Forwarded to Examiner	0
84	09/09/2008	ABN9	Disposal for a RCE / CPA / R129	0
87	08/28/2008	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	0
85	08/28/2008	05/28/2008 RCEX	Request for Continued Examination (RCE)	92 79
83	08/28/2008	XT/G	Request for Extension of Time - Granted	0
82	08/28/2008	BRCE	Workflow - Request for RCE - Begin	0
81	03/04/2008	ELC_RVW	Electronic Review	0
80	03/01/2008	EML_NTF	Email Notification	0
79	02/28/2008	MCTFR	Mail Final Rejection (PTOL - 326)	0
78	02/19/2008	CTFR	Final Rejection	0
75	12/12/2007	FWDX	Date Forwarded to Examiner	0
73	12/12/2007	ABN9	Disposal for a RCE / CPA / R129	0
72	11/07/2007	EML_NTR	Email Notification	0
71	11/06/2007	MEXIN	Mail Examiner Interview Summary (PTOL - 413)	0
77	11/02/2007	RQPR	Request for Foreign Priority (Priority Papers May Be Included)	0
76	11/01/2007	AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	0
74	11/01/2007	RCEX	Request for Continued Examination (RCE)	0
70	11/01/2007	BRCE	Workflow - Request for RCE - Begin	0

69	10/23/2007	07/23/2007 N/AP	Notice of Appeal Filed	92	66
68	10/23/2007	XT/G	Request for Extension of Time - Granted	0	0
67	10/23/2007	EXIN	Examiner Interview Summary Record (PTOL - 413)	0	0
66	04/23/2007	MCTFR	Mail Final Rejection (PTOL - 326)	0	0
65	04/16/2007	CTFR	Final Rejection	0	0
64	01/29/2007	FWDX	Date Forwarded to Examiner	0	0
63	01/16/2007	01/18/2005 A...	Response after Non-Final Action	728	60
62	01/04/2007	NINA	Mail Notice of Informal or Non-Responsive Amendment	0	0
61	10/10/2006	FWDX	Date Forwarded to Examiner	0	0
58	09/21/2006	LET.	Miscellaneous Incoming Letter	0	0
57	04/13/2006	C.AD	Correspondence Address Change	0	0
56	03/07/2005	MNRAB	Mail Notice of Rescinded Abandonment	0	0
55	03/07/2005	NRAB	Notice of Rescinded Abandonment in TCs	0	0
54	03/07/2005	MPREV	Mail-Petition to Revive Application - Granted	0	0
53	02/04/2005	PET.	Petition Entered	0	0
52	02/04/2005	WPET	Workflow incoming petition IFW	0	0
50	01/25/2005	MABN2	Mail Abandonment for Failure to Respond to Office Action	0	0
49	01/24/2005	ABN2	Aband. for Failure to Respond to O. A.	0	0
60.1	01/18/2005	A.I.	Informal or Non-Responsive Amendment after Examiner Action	0	0
60	01/18/2005	A...	Response after Non-Final Action	0	0
59	01/18/2005	XT/G	Request for Extension of Time - Granted	0	0
51	01/18/2005	WAMD	Workflow incoming amendment IFW	0	0
48	07/13/2004	MCTNF	Mail Non-Final Rejection	0	0
47	07/12/2004	CTNF	Non-Final Rejection	0	0
46	06/04/2004	FWDX	Date Forwarded to Examiner	0	0
44	06/04/2004	ABN9	Disposal for a RCE / CPA / R129	0	0
42	06/04/2004	RCAP	Reference capture on IDS	0	0
45	06/01/2004	RCEX	Request for Continued Examination (RCE)	0	0
43	06/01/2004	XT/G	Request for Extension of Time - Granted	0	0
41.7	06/01/2004	M844	Information Disclosure Statement (IDS) Filed	0	0
41	06/01/2004	WIDS	Information Disclosure Statement (IDS) Filed	0	0
40	06/01/2004	WAMD	Workflow incoming amendment IFW	0	0
39	06/01/2004	BRCE	Workflow - Request for RCE - Begin	0	0

38	03/09/2004	MCTAV	Mail Advisory Action (PTOL - 303)	0
37	03/06/2004	CTAV	Advisory Action (PTOL-303)	0
36	01/02/2004	10/01/2003 N/AP	Notice of Appeal Filed	93
35	01/02/2004	XT/G	Request for Extension of Time - Granted	27
34	12/10/2003	TSSA	IFW Amended case processing Complete	0
33	12/10/2003	RCAP	Reference capture on IDS	0
32	12/10/2003	FWDX	Date Forwarded to Examiner	0
31	12/04/2003	A.NE	Amendment after Final Rejection	0
30	12/04/2003	XT/G	Request for Extension of Time - Granted	0
29.7	12/04/2003	M844	Information Disclosure Statement (IDS) Filed	0
29	12/04/2003	WIDS	Information Disclosure Statement (IDS) Filed	0
28	07/16/2003	C.AD	Correspondence Address Change	0
27	07/01/2003	MCTFR	Mail Final Rejection (PTOL - 326)	0
26	06/30/2003	CTFR	Final Rejection	0
25	04/28/2003	FWDX	Date Forwarded to Examiner	0
24	04/24/2003	03/18/2003 A...	Response after Non-Final Action	21
23	04/24/2003	XT/G	Request for Extension of Time - Granted	37
22	04/24/2003	AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	0
21	12/18/2002	MCTNF	Mail Non-Final Rejection	0
20	12/16/2002	CTNF	Non-Final Rejection	0
19	10/02/2002	AC20	X-Pre-Legal Complete Amended Case	0
18	10/02/2002	FWDX	Date Forwarded to Examiner	0
17	09/16/2002	ELC.	Response to Election / Restriction Filed	0
16	09/16/2002	XT/G	Request for Extension of Time - Granted	0
15.7	09/16/2002	M844	Information Disclosure Statement (IDS) Filed	0
15	09/16/2002	WIDS	Information Disclosure Statement (IDS) Filed	0
14	07/10/2002	12/27/2001 MCTRS	Mail Restriction Requirement	195
13	07/10/2002	RE16	X-Post-Legal Complete Rejection	-1
12	07/10/2002	CTRS	Requirement for Restriction / Election	0
11	02/22/2002	LET.	Miscellaneous Incoming Letter	0
10	10/10/2001	DOCK	Case Docketed to Examiner in GAU	0
9.7	09/10/2001	M844	Information Disclosure Statement (IDS) Filed	0
9	09/10/2001	WIDS	Information Disclosure Statement (IDS) Filed	0

7	05/20/2001	DOCK	Case Docketed to Examiner in GAU	0
6	04/17/2001	OIPE	Application Dispatched from OIPE	0
5	04/17/2001	COMP	Application Is Now Complete	0
8	03/26/2001	A.PE	Preliminary Amendment	0
4	01/02/2001	INCD	Notice Mailed---Application Incomplete--- Filing Date Assigned	0
3	01/02/2001	C.AD	Correspondence Address Change	0
2	11/30/2000	SCAN	IFW Scan & PACR Auto Security Review	0
1	10/27/2000	IEXX	Initial Exam Team nn	0

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